IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1015 OF 1988

Kishorilal Gopikisan Kasat ...Appellant

Vs.

The Special Land Acquisition Officer,Pune ...Respondent

WITH
FIRST APPEAL NO.534 OF 1988

The State of Maharashstra ...Appellant

Vs.

Kishorilal Gopikisan Kasat ...Respondent

FIRST APPEAL NO.500 OF 1989

Ganesh R.Dhadphale ...Appellant

Vs.

The Special Land Acquisition Officer,Pune ...Respondent

WITH
FIRST APPEAL NO.54 OF 1989

The State of Maharashtra ...Appellant

Vs.

Ganesh R. Dhadphale ...Respondent

Mr.N. B. Shah for the Appellants in First Appeal Nos.1015/1988 and for Respondent in First Appeal Nos.534/1988

Mr.M.L.Patil for the Appellant in First Appeal No.500 of 1989 and for the Respondent in First Appeal No.54 of 1989

Mr.K.K.Tated,A.G.P. for the Respondent in First Appeal Nos.1015/1988 and 500/1989 for the Appellant in First Appeal Nos.534/1988 and 54/1989

CORAM: A.S.OKA, J.
DATED: APRIL 24,27 AND 28, 2006.

ORAL JUDGMENT:

1. On the last date the submissions of the learned Advocates appearing for the parties were heard. These Appeals can be conveniently disposed of by a common Judgment. First Appeal No.1015 of 1988 is the Appeal preferred by the claimant in a reference proceedings under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). By the impugned Judgment and Award dated 30th November 1987, the learned Extra Joint District Judge, Pune declined to grant any enhancement in the market value. However, the learned Judge granted the benefit of solatium under section 23(2), interest under section 23 (1-A) and interest under section 28 of the said Act. First Appeal No.534 of 1988 is the cross Appeal preferred by the State Government for challenging the said Award. First Appeal 500 of 1989 is preferred by the original claimant for challenging the Judgment and Award dated 21st June 1988 passed by the learned Extra Joint District Judge, Pune under section 18 of the said Act. By the impugned Judgment and Award the learned Judge rejected the claim for enhancement made by the claimant. However, he granted statutory benefits under section 23 (1-A), 23(2) and Section 28 of the said Act. First Appeal No.54 of 1989 is the cross Appeal preferred by the State Government for challenging the impugned Judgment and Award.

2. The land subject matter of the First Appeal No.1015 and 534 of 1988 is bearing survey No.42 of Pashan, Taluka Haveli, District Pune. The area of the land is 31 acres and 9 gunthas. A notification under section 4 of the said Act was issued on 17th November 1976. The Award under section 11 of the said Act was made by the Special Land Acquisition Officer on 17th December 1980. By the said Award Special Land Acquisition Officer valued the land under acquisition at the rate of Rs.3000/- per acre.

3. So far as the First Appeal Nos.500/1989 and 534/1988 are concerned, the land involved is survey No.53 situated at Pashan, Taluka Haveli, District Pune admeasuring 28 acres and 22 gunthas. A notification under section 4 of the said Act was issued on 17th November 1976 and the Award was made on 11th January 1979 under section 11 of the said Act by which market value was fixed at Rs.3500/- per acre.

4. Shri N.B.Shah learned Advocate appearing for the Appellant in F.A.No.1015/1988 and for Respondent in Cross Appeal First Appeal No.534 of 1988 has taken me through the evidence on record. He relied upon the sale instance of sale deed dated 19th June 1966 which is at Exh.31. He submitted that the land which is subject matter of the sale deed is comparable to the acquired land. He pointed out that the sale instance at Exh.31 shows that the market value of the

acquired land on the relevant date was Rs.16,000/- per acre. He also placed reliance on two other sale instances at Exh.32 and Exh.33 which are sale deeds dated 9th April 1966. The said sale deeds relate to the lands situated in the same village and the market value evidenced by the said sale deeds is to the tune of Rs.21,000/- per acre. He invited my attention to the Award made under section 11 of the said Act in respect of the land bearing survey No.40 from the same village which is at Exh.38. He pointed out that the market value at the rate of 50,000/- per hectare is awarded by the said Award. He invited my attention to the oral evidence on record and submitted that the market rate of the acquired land on the relevant date was at least Rs.16,000/- per acre. Shri Patil learned Advocate appearing for the Appellant in F.A.No.500/89 and for Respondent in F.A.54/89 submitted that the land which is subject matter of the said Appeals is more advantageously situated than the land subject matter of the companion Appeals and that the land is abutting the Gaothan.

5. Shri Tated, learned A.G.P. pointed out that in so far as the land subject matter of First Appeal No.1015 of 1989 is concerned, it is located on a hillock and is far away from public road and the Gavthan. He submitted that the sale instances which are relied upon by the claimants are of the lands from the same village which are situated far away from the acquired land. He submitted that the sale instances are

of smaller plots which are better located and therefore cannot be said to be comparable. He, therefore, submitted that the Reference Court was right in dismissing the claim for enhancement of the market value.

6. Shri Shah for the claimants in F.A.No.1015 of 1988 has pointed out that though the original Award under section 11 of the said Act was made on 17th December 1980, the same was amended on 11th January 1985. He submitted that in view of the amendment carried out to the Award, it will have to be treated as the one made after 30th April 1982 and therefore, the claimant in the said case will be entitled to benefit of interest under section 23 (1-A) of the said Act.

7. Shri Tated, learned A.G.P. submitted that the Award is not amended but what has been amended is the Award statement which is forwarded to the Civil Court along with the reference under section 18 of the said Act. He, therefore, submitted that the date of the Award will have to be treated as the date of original Award.

8. I have considered the submissions. The first sale instance which is relied upon by the claimants is at Exh.31. The said sale instance is of a sale dated 19th June 1966. It pertains to the land bearing survey No.14/1-A of village Pashan admeasuring 6 acres and 2 gunthas. The price of the

said land is fixed at Rs.96,000/-. Thus, approximately the rate comes to Rs.16,000/- per acre. It must be noted here that the sale deed contains a recital that the area of about 800 sq.ft in western corner of the plot sold has been unauthorisedly encroached upon by a third party. Thus, the price of Rs.16,000/- per acre has been fixed considering the fact that a small part of the land was encroached upon by a third party. The second sale instance at Exh.32 is dated 9th April 1966. The said sale deed pertains to the land bearing survey No.41/1/1 admeasuring 9460 sq.ft. (8 and 3/4 gunthas) of village Pashan and the consideration which is disclosed is Rs.4730/-. The third sale instance is the sale deed at Exh.33 dated 9th April 1966. The said sale deed relates to the area of 39 gunthas bearing survey No.49/1/1 of village Pashan. The price which is mentioned in the sale deed is Rs.21,423/-. Thus, the rate is Rs.21,970/- per acre.

9. So far as the acquired land bearing survey No.42 is concerned, the Claimant Kishorilal Gopikisan Kasat stated in examination-in-chief that the acquired land was a non-agricultural land which was situated within the limits of the Pune Municipal Corporation. He stated that the land which is subject matter of the sale deed at Exh.31 is located at the distance of 1/2 furlong from the acquired land bearing survey No.42. He stated that the lands subject matter of the sale deeds at Exh.31 and 32 are very near to the acquired

land. In the cross examination he admitted that the land bearing survey No.49 which is subject matter of sale deed dated 9th April 1966 (Exh.33) is adjoining the Gavthan of village Pashan and it is a levelled land. He denied the suggestion that there are hills and other lands between the survey No.42 and survey No. 49. He admitted that the land bearing survey No.42 starts from the top of the hill and slope is towards north on all three sides of the land. He stated that all the lands around distance of one k.m. have been acquired for the A.R.D.E. In cross examination he further stated that the survey No.42 is not converted to non-agricultural use and but it can be used for non agricultural purpose. Though he stated that there is an approach road to the land, he admitted that in the map on record, the approach road is not shown.

10. In case of the other acquired land viz. the land bearing survey No.53, one Dhananjay Ganesh Dhadphale, the son of the claimant has been examined at Exh.20. He stated that the acquired land has two accesses. He stated that plans for T.B.Sanatorium and a hospital were sanctioned in the year 1948 by the Collector. The Municipal Corporation also sanctioned the plans in the year 1957. He produced on record the plans sanctioned in the year 1948 and 1957 which were exhibited on record. He stated that the acquired land is on the hilltop but the top is plain. In the cross examination

he denied the suggestion that there was no access to the acquired land. He stated that there was a cart track and the said track was converted into tar road by the Corporation later on. He stated that the permission was granted but no development was carried out on the said land.

11. Both the claimants claimed the market value at the rate of Rs.20,000/- per acre. The sale instance of award under section 11 of the said Act in respect of land bearing Survey No.40 cannot be considered as relevant. The notification under section 4 of the said Act in case of the said land was issued on 6th January 1984. The notification under section 4 in respect of acquired land is of the year 1976. Therefore the said document at Exhibit 38 is required to be discarded.

12. A true copy of the village map is placed on record at Exh.30. The village map shows that the survey No.14 which is the subject matter of the sale instance at Exh.31 is closer to the Gaothan than the land bearing Survey No.42. Survey No.14 touches a road leading to Pune. The acquired land bearing Survey No.42 is at some distance from the survey No.14. The village map shows that there is a hill on survey No.42 which is touching the boundary of village Pashan. So far as the land subject matter of Exh.32 is concerned i.e. survey No.41/1/1, it is touching the land bearing survey No.42. It is also touching the boundary of village Pashan.

The land bearing survey No.49 which is subject matter of Exh.33 is very close to the Gaothan but it is away from the land bearing survey No.42. The other acquired land bearing Survey No.53 is close to the Gaothan and is closer to Survey No.14 than the land Survey No.42. As indicated earlier, the market value of the land which is subject matter of Exh.31 is about 16,000/- per acre. So far as this land is concerned, it touches the road known as Aundh Pune Road. The facilities such as water and electricity are not available to both the acquired lands. So far as the sale instance at Exh.32 is concerned, it is in respect of a very small area of about 9 gunthas. It cannot be said to be comparable with the acquired lands. Therefore, the same need not be considered. However, the other sale instance at Exh.33 is of survey No.49 admeasuring 39 gunthas which is approximately 1 acre. So far as the land subject matter Exh.33 is concerned, the village map shows that the said land touches a road going to Pune. Considering the respective area and location of the lands, the sale instances at Exh.31 and 33 can be considered for determination of market value of the acquired lands. The said two sale instances are of close proximity to the relevant date in the present cases. As compared to sale instance at Exh.31 and 33, the lands bearing survey No.42 is of an inferior quality for the reason that there is no regular approach road to the said land and the land is on a slope of a hill. So far as the land bearing No.53 is

concerned it is also on a hill and there is no regular road touching the said land. However, the top of the hill is levelled. It is closer to Gavthan and to the lands bearing survey Nos.14 and 49 which are subject matter of Exh.31 and 33. The sale instances at Exh.31 and 33 are of the lands from the same village which are located in a reasonable proximity of the acquired lands. In my view, the said sale instances afford a guide-line to decide the market value of the acquired lands. Both the acquired lands are within the limits of Pune Municipal Corporation. The potential of the said lands for non-agricultural purposes will have to be taken into account subject to necessary deduction which will have to be made on account of the development charges.

13. The Apex Court in case of Krishna Yachandra Vs. Special Land Acquisition Officer reported in A.I.R. 1979 S.C. page 869 has held that the estimation of the market value in many cases must largely depend on evaluation of many imponderables and hence it must necessarily be to some extent a matter of conjecture or guess. Coming to the land bearing survey No.53, as stated earlier, it is in close proximity to the Gavthan. It is also close to the lands subject matter of the sale instances at Exh.31 and Exh.33. However, there is no regular road touching the said land which is on a hill. Surely, the price of the said acquired land cannot be exactly on the par with the sale instances at Exh.31 and Exh.33.

Both these lands subject matter of Exh.31 and 33 have an advantage of a direct access to public roads. Considering its close proximity to the Gavthan and considering the sale instances at Exh.31 and Exh.33, the market value of the land bearing survey No.53 will have to be fixed at the rate of Rs.10,000/- per acre. However, considering the area of the land, appropriate deduction will have to be made on account of development charges. The Apex Court in case of Tejumal Vs. State of Uttar Pradesh reported in A.I.R. 2003 S.C. page 3791 has held that the deduction for development charges varies from place to place and area to area. There are decisions of the Apex Court holding that the deduction should be in the range between 20% to 40% of the market value. There are decisions of Division Benches of this Court where it is held that the deduction should be of 10% to 20%. The land bearing survey No.53 is on the top of a small hillock. At the relevant time, there was no public road available for approaching the said land. The said facts are relevant for determining the development charges. The development charges in this case will be 25%. Thus, the market rate will have to be fixed at the rate of Rs.7,500/- per acre. In this case the Award under section 11 has been made prior to 30th April 1982. Hence, the claimant will not get the benefit of section 23(1-A) of the said Act but the claimant will get benefits under section 23(2) and section 28 of the said Act.

14. Turning to the other case, it must be borne in mind that the acquired land bearing survey No.42 is far away from Gaothan. There is no specific access road available to the said land save and except approach road which may be available under the provisions of Maharashtra Land Revenue Code, 1966. The land is on the slope of a hill. Therefore, the market rate of this land has to be less than Rs.10,000/- per acre. Considering the location of the land and all other aspects, in my view, the market rate will have to be fixed at Rs.8,000/- per acre. In this case, the cost of development will be more as the land is on the slope of a hillock. Therefore, a deduction of Rs.3,000/- will have to be made and therefore, the market value will have to be fixed at the rate of Rs.5,000/- per acre.

15. The other question which will have to be decided in case of survey No.42 is that what should be the date of Award under section 11 of the said Act. The Award under section 11 has been declared on 17th December 1980. Shri Shah for the claimant submitted that under the provisions of Maharashtra Amendment to section 18 of the said Act, it is permissible to file a reference under section 18 of the said Act on the basis of an amended Award. In the facts of the present case, it must be noted here that reference application is filed on the basis of the Award dated 17th December 1980. By the order which is made on 11th January 1985, the name of the

claimant was recorded as a person who was entitled to receive compensation. The application made under section 18 of the said Act on the basis of the Award dated 17th December 1980 was not amended on the basis of aforesaid order. I have perused the document dated 11th January 1985 which is described as the amended Award. In the said document, a reference is made to the decree passed in Civil Suit No.766 of 1989 and it is stated that the Award statement in Form 'A' has been amended for incorporating the name of the claimant. The document cannot be read as an amended Award or the amendment made to the Award. It is only an amendment to the Award statement which is forwarded to the Reference Court along with Application under section 18 of the said Act. There is nothing on record to show that the original Award was amended. In any event, alleged amended Award is not placed on record. Moreover, the reference application is made on the basis of the Award made on 17th December 1980. Hence, the claimant will not be entitled to statutory benefit under section 23 (1-A). However, he will get other statutory benefits.

16. Hence, I pass the following order :

FIRST APPEAL NO.1015 OF 1988

i) Appeal is partly allowed.

ii) The claimant will be entitled to market value at the rate of Rs.5,000/- per acre. The claimant will be entitled to statutory benefits under section 23 (2) and 28 of the Land Acquisition Act, 1894.

iii) The Reference Court will calculate the amount of compensation payable to the claimant within a period of four months from the date of receipt of writ of this order.

iv) The Appellant will be entitled to proportionate costs throughout i.e. the proportionate costs of the reference as well as this Appeal from the Respondent.

FIRST APPEAL NO.534 OF 1988

i) The Appeal is partly allowed only to the extent to which benefit under section 23(1-A) of the said Act was granted to the claimant.

ii) The Appellant will pay cost of the Appeal to the Respondent.

FIRST APPEAL NO.500 OF 1989

i) Appeal is partly allowed. The claimant is entitled to market value at the rate of Rs.7,500/- per acre together with statutory benefits under section 23(2) and section 28 of the Land Acquisition Act, 1894.

ii) The Reference Court will make necessary calculation of the amount payable to the claimant within a period of four months from the date of receipt of writ of this order.

iii) The claimant will be entitled to proportionate cost throughout i.e. the proportionate costs of the reference as well as this Appeal from the Respondent.

FIRST APPEAL NO.54 OF 1989

i) Appeal is partly allowed only to the extent to which the of statutory benefit under section 23(1-A) of the said Act was granted to the claimant.

ii) The Appellant will pay costs of the Appeal to the claimant.

Judge.